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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 vs.
14 CRAIG ALLEN MORGENSTERN,
15 Defendant.

No. 14-CR-00161-WFN

**UNITED STATES' MOTION TO
AUTHORIZE PAYMENT FROM
INMATE TRUST ACCOUNT**

Hearing: September 8, 2017 at 6:30 p.m.
(Without Oral Argument)

16 The United States of America, by and through Joseph H. Harrington, Acting
17 United States Attorney, and Brian M. Donovan, Assistant United States Attorney,
18 pursuant to 18 U.S.C. §§ 3613(a) and 3664(n), requests this Court to enter an order
19 authorizing the Bureau of Prisons to turn over to the Clerk of Court funds in the
20 amount of \$13,458.55 held in the inmate trust account for the above named Defendant
21 as payment toward the criminal monetary penalties imposed in this case. In support of
22 this motion, the United States provides the following:

- 23 1. The Defendant, Craig Allen Morgenstern, was convicted by a jury trial of
24 34 counts relating to his criminal conduct:
- 25 • Aggravated Sexual Abuse of a Child (Minor at Least 12 but Under 16),
26 in violation of 18 U.S.C. § 2241(c), (Counts 1,4,6,8,10,12,14 and 18),
 - 27 • Aggravated Sexual Abuse of a Child (Under 12), in violation of 18
28 U.S.C. § 2241(c), (Counts 20, 22, 24, 30),

- 1 • Production of Child Pornography, in violation of 18 U.S.C. § 2251(a),
2 (Counts 2,3,5,7,9,11,13,15,17,19,21,23,25,27,29,31 and 32),
- 3 • Attempted Production of Child Pornography, in violation of 18 U.S.C.
4 § 2251(a), (Count 33),
- 5 • Transportation with Intent to Engage in Sexual Contact with a Minor,
6 in violation of 18 U.S.C. § 2423(a), (Counts 26 and 28),
- 7 • Receipt of Child Pornography, in violation of 18 U.S.C. § 2252(a)(2),
8 (Count 34), and
- 9 • Possession of Child Pornography, in violation of 18 U.S.C. § 2252A
10 (a)(5)(B), (Count 35).

11 2. On July 25, 2016, this Court sentenced the Defendant to a term of life
12 imprisonment on Counts, 1, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, and 30 of the Third
13 Superseding Indictment; 30 years each on Counts 2, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21,
14 23, 25, 27, 29, 31, 32, 33 of the Third Superseding Indictment; and 20 years each on
15 Counts 26, 28, and 34 of the Third Superseding Indictment with all sentences to be
16 served concurrent to one another, a \$3,300 special assessment fee, with restitution in
17 the amount of \$10,208.55.

18 3. The Defendant has paid \$50 toward the \$3,300 assessment. To date,
19 Defendant has paid no amount toward his restitution, leaving a current balance of
20 \$10,208.55, as of August 8, 2017.

21 4. The Defendant remains in custody at the United States Penitentiary, in
22 Tucson, AZ. He is not scheduled to be released from federal custody.

23 5. The United States Attorney's Office for this district was recently
24 informed that the Defendant currently maintains substantial funds in his inmate trust
25 account maintained by the Bureau of Prisons ("BOP")¹. In accordance with its
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27

28 ¹ The purpose of inmate trust account or commissary account is to allow the BOP to
UNITED STATES' MOTION TO AUTHORIZE PAYMENT FROM INMATE TRUST ACCOUNT- 2

1 regulations, the BOP deposited these funds into the Defendant's trust account, and it
2 currently maintains in its possession, custody, or control approximately \$26,949.05 in
3 funds belonging to the Defendant. By this motion, the United States seeks entry of an
4 order authorizing the BOP to turn over these funds to the Clerk of Court as payment
5 toward the Defendant's outstanding criminal monetary penalties.

6 6. Title 18, United States Code, Section 3613 sets forth the procedures for
7 the United States to enforce criminal monetary penalties, including restitution and
8 criminal fines. *See* 18 U.S.C. §§ 3613(a), 3613(f) (United States enforces restitution in
9 the same manner as a fine). In particular, the statute provides that a sentence imposing
10 restitution constitutes a lien in favor of the United States against all of the Defendant's
11 property and rights to property. 18 U.S.C. § 3613(c).

12 Thus, the United States' lien would attach to the Defendant's interest in funds
13 held by the BOP in his inmate trust account. *See also* 18 U.S.C. §§ 3613(a) (United
14 States enforces restitution against all property and rights to property of the
15 Defendant); 18 U.S.C. § 3664(m) (United States may use all available and reasonable
16 means to collect restitution). Also, pursuant to the Crime Victim Rights Act, the
17 victims of the Defendant's crimes are entitled to full and timely restitution as provided
18 by law. *See* 18 U.S.C. § 3771(a)(6).

19 7. More importantly, the Mandatory Victims Restitution Act, 18 U.S.C. §
20 3663A, *et seq.* ("MVRA"), which applies here, requires that the Defendant's resources
21 received from any source during his term of incarceration must be applied to his
22 outstanding restitution obligation.

23 _____
24 maintain inmates' monies while they are incarcerated, including monies received by
25 inmates from prison employment and outside sources. 28 C.F.R. §§ 506.1, 545.11.
26 Family, friends, or other sources must deposit funds for the benefit of the inmate into
27 these accounts. *Id.* Deposits intended for the inmates' account must be mailed directly
28 to the BOP's centralized commissary account. 28 C.F.R. § 540.23.

Specifically, 18 U.S.C. § 3664(n), which provides the procedures for the imposition and enforcement of restitution, states:

If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, *such person shall be required to apply the value of such resources to any restitution or fine still owed.*

18 U.S.C. § 3664(n) (emphasis added). *See also United States v. Poff*, 2016 WL 3079001, *6 (W.D. Wash. June 1, 2016) (Robart, J.) (VA compensation received by defendant in prison is collectible under § 3664(n)); *United States v. Cunningham, et al.*, 866 F. Supp.2d 1050, 1061-62 (S.D. Iowa 2012) (entire amount of Defendant's disability retirement payments could be garnished while Defendant was incarcerated as necessary and appropriate to effectuate § 3664(n) and the restitution order); *United States v. Khazraeinazmpour*, 2015 WL 5311650, at *1 (D. Minn. Sept. 11, 2015) (§ 3664(n) “requires that a defendant's resources received from any source during a defendant's term of incarceration must be applied to their outstanding restitution obligation”).

8. The United States also submits that an order authorizing the turn over of the Defendant's property is appropriate here, and the United States is not required to rely upon other formal collection remedies such as garnishment of or execution upon property to obtain these funds. *See Poff*, 2016 WL 3079001 at *6. The funds at issue currently are in the United States' possession, and the United States has a valid lien over this property.

9. Furthermore, because the property is cash, it does not fall within any applicable categories of the exempt property that a Defendant may claim in a criminal case. *See* 18 U.S.C. § 3613(a)(1) (setting forth the applicable IRS property exemptions for criminal cases). For criminal debts such as restitution, federal law provides that only very limited categories of property are exempt from collection. 18 U.S.C. § 3613(a)(1). None of the limited property exemptions applies here. *See Poff*, 2016 WL

1 3079001 at *4-6 (rejecting defendant's arguments that VA benefits are statutorily
2 exempted from collection for criminal restitution by the United States from his BOP
3 inmate account); *Metcalf v. United States*, WL 1517821, at *4 n.5 (Fed. Cl. Apr. 15,
4 2013) (38 U.S.C. § 5301(a)(1) "eliminate[s] any bar to the Federal Government
5 attaching or seizing VA benefits"). Accordingly, Defendant cannot properly claim that
6 the funds held in his inmate trust account are exempt from payment of restitution.²

7 10. The Defendant also failed to notify this Court and the United States
8 Attorney's Office that he acquired these significant funds as required by the restitution
9 laws and the Judgment entered on July 25, 2016. ECF 159. Federal law states that the
10 Defendant must notify the Court and the United States Attorney's Office of any
11 material change in his "economic circumstances" that might affect the Defendant's
12 ability to pay restitution. 18 U.S.C. § 3664(k). "Upon receipt of such notification, the
13 court may, on its own motion, or the motion of any party, including the victim, adjust
14 the payment schedule, or require immediate payment in full, as the interests of justice
15 require." *Id.* The receipt of \$\$26,949.05 in funds by the Defendant here certainly
16 constitutes a material change in his "economic circumstances" that affects his ability
17 to pay restitution under § 3664(k).

18 11. The United States has served the Defendant with a copy of this motion,
19 and he may object to the United States' intended use of his property. The United States
20 is not aware of any other party who may claim an interest in this property.

21 12. The United States submits that the requested relief is reasonable and
22 appropriate in this instance where the Defendant has accumulated significant funds in
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24 ² By statute, challenges to a garnishment of the Defendant's property are limited to: (1)
25 the probable validity of any claim of exemption and (2) compliance with any statutory
26 requirement for the issuance of the post-judgment remedy granted). 28 U.S.C. §
27 3202(d); *United States v. Lazzari*, 2014 WL 197739 (M.D. Fla. January 15, 2014).
28

1 his inmate trust account, yet has applied no amount toward his restitution obligation.
2 Also, without this relief, the BOP will be required to allow the Defendant access to
3 these funds. This would allow the Defendant, or others, the opportunity to possibly
4 dissipate, conceal, or transfer the funds without first paying restitution.

5 13. The Defendant is scheduled to remain incarcerated for life. He was
6 convicted of serious offenses, and his restitution obligation is due and owing. Under
7 the Crime Victims Act, the Defendant's victims are entitled to "full and timely"
8 restitution. Accordingly, his victims are owed the excessive proceeds which have
9 accumulated in his inmate trust account; payment of which will fulfill Defendant's
10 criminal restitution and fine obligation.

11 Accordingly, the United States requests that the Court grant its motion and
12 order that the BOP turn over the funds in the Defendant's inmate trust account to the
13 Clerk of Court to be applied to satisfy in full the Defendant's restitution obligations
14 and criminal fines.

15 WHEREFORE, for the reasons explained above, the United States requests that
16 this Court grant its motion.

17 RESPECTFULLY SUBMITTED: August 9, 2017.

18 JOSEPH H. HARRINGTON
19 Acting United States Attorney

20 s/Brian M. Donovan
21 Brian M. Donovan
22 Assistant United States Attorney
23 Attorneys for Defendant United States
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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Bryan P Whitaker

whitakerattorney@hotmail.com

And to the following non CM/ECF participants:

Craig Allen Morgenstern, Reg. No. 17551-085
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s/Brian M. Donovan
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